

# Tobacco Control Act 2009

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# Tobacco Control Act 2009

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## TABLE OF AMENDMENTS

The Tobacco Control Act 2009 No 4 was certified on 20 April 2009 and commenced on 20 July 2009 (s 1(2)) except the provisions specified in Schedule which commence on the dates set out in that Schedule (s 1(3)).

Amending Legislation	Certified	Date of Commencement
Tobacco Control (Amendment) Act 2009 No 6	28 August 2009	28 August 2009
Revised Written Laws Act 2021 No 7	1 June 2021	1 June 2021
Tobacco Control (Amendment) Act 2023 No 6	7 June 2023	7 June 2023
Tobacco Control (Amendment) Act 2024 No 11	20 August 2024	20 August 2024
Tobacco Control (Amendment) Act 2025 No 28	25 July 2025	25 July 2025

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An Act to regulate the promotion, sale and use of cigarettes and other tobacco products and for ancillary purposes.

Enacted by the Parliament of Nauru as follows:

## PART 1 — PRELIMINARY

### 1 Short title and commencement

- (1) This Act may be cited as the *Tobacco Control Act 2009*.
- (2) Subject to subsection (3), this Act came into effect on 20 July 2009.
- (3) Notwithstanding subsection (2), the provisions of this Act specified in Schedule shall not come into force on the commencement date, but shall come into force on the later date specified in the Schedule.
- (4) The Schedule forms part of this Act.

### 2 Interpretation

In this Act:

**‘authorised officer’** means a police officer or a person prescribed under Section 19;

**‘certification’** means the certification by the Speaker in accordance with Article 47 of the *Constitution* that the Act has been passed by Parliament;

**‘cigarette’** includes any product that:

- (a) consists wholly or partly of cut, shredded or manufactured tobacco or of any tobacco derivative or substance, rolled up in paper; and
- (b) is capable of being immediately used for smoking;

[def subst Act 11 of 2024 s 4, opn 20 Aug 2024]

**‘designated smoking area’** means an area approved by an authorised officer in accordance with Section 17;

**‘enclosed public place’** means, subject to Section 16 and the Schedule, any enclosed place, including public transport, government offices and their verandas and corridors, airport terminals, and halls to which the public ordinarily has access, and includes restaurants, bars, cafes and public spaces within any hotel, any public place at which a sporting event is being held and any public place covered by a roof or enclosed by one or more walls or sides, regardless of the type of material used for the roof, wall or sides, and regardless of whether the structure is permanent or temporary, and any place deemed by regulations to be an enclosed public place, but does not include any designated smoking area within an enclosed public place nor any private residence;

**‘enclosed workplace’** means, subject to Section 16 and the Schedule, any enclosed place, building or area that is occupied by an employer and that employees usually frequent during the course of their employment, and includes any cafeteria, veranda, corridor, lobby, stairwell, toilet and washroom within such workplace, and also includes any enclosed common areas and any workplace space covered by a roof or enclosed by one or more walls or sides, regardless of the type of material used for the roof, wall or sides and regardless

of whether the structure is permanent or temporary, and employer-provided vehicles normally used by employees, but does not include any place of residence occupied by an employer or an employee or a vehicle while it is occupied by only one person, and does not include any designated smoking area within an enclosed workplace;

**‘hospital’** means any place inside or within the grounds of any hospital;

**‘imitation tobacco product’** includes candy or chocolate cigarettes, bubble gum cigars, shredded bubble gum resembling chewing tobacco or any toy, food, drink, cartoon character, animal, musical instrument or any other object resembling a tobacco product, e-cigarette or e-cigarette accessory;

[def insrt Act 11 of 2024 s 4, opn 20 Aug 2024]

**‘Minister’** means the Minister responsible for this Act;

[def subst Act 28 of 2025 s 4, opn 25 July 2025]

**‘occupier’** in relation to an enclosed public place or an enclosed workplace is a person who is or appears to be in control of the public place or workplace;

**‘package’** includes a box, tin, packet, or carton but does not include any outer wrapper, cellophane or other transparent material;

**‘public space within a hotel’** means any area in or on the hotel premises that is accessible to the public and which is not restricted only to a particular guest or guests;

**‘regulations’** means regulations made under this Act;

[def subst Act 6 of 2023 s 4, opn 7 June 2023]

**‘restaurant’** means any place or any part thereof where the principal business is the serving of meals or refreshments to the public for consumption at such place;

**‘school’** means any place inside or within the grounds of any school;

**‘Secretary’** means the Secretary for the Department responsible for this Act;

[def subst Act 28 of 2025 s 4, opn 25 July 2025]

**‘sell’** includes:

- (a) barter or exchange;
- (b) offer or expose for sale;
- (c) supply, or offer to supply, in circumstances in which the supplier derives, or would derive, a direct or indirect pecuniary benefit; and
- (d) supply, or offer to supply, gratuitously but with a view to gaining or maintaining custom, or otherwise with a view to commercial gain;

**‘smoking’**, with its grammatical variations, means puffing or inhaling and expelling the smoke of any tobacco product and includes the holding of, or control over, any ignited tobacco product;

**‘tar’** means the Condensate Particulate Matter (CPM) which results from the ignition of any tobacco product;

**‘tobacco’** means any product obtained from the leaf of the *Nicotiana tabacum* or *Nicotiana rusticum* plant or other related plants;

**‘tobacco product’**:

- (a) means a product comprised in whole or in part of tobacco such as tobacco leaves and any extract of tobacco leaves containing, made, manufactured or

derived from tobacco that is intended for human consumption, whether chewed, smoked, absorbed, dissolved, inhaled, snorted, sniffed or ingested by any other means, or comprised mainly of nicotine;

- (b) includes any component, part or accessory of a tobacco product such as cigarette papers, tubes, filters, electronic tobacco heating devices and waterpipe, shisha or hookah; and
- (c) includes a cigarette;

[def subst Act 6 of 2023 s 4, opn 7 June 2023; am Act 11 of 2024 s 4, opn 20 Aug 2024]

**‘tobacco product advertisement’** means any words, whether written, printed, spoken, broadcast, or telecast, including on film, video, visual compact disk, recording or other medium, and any pictorial representation, design, device, visual image, sign, symbol, trademark, brand name or company name, or part of a trademark, brand name or company name, or a combination of 2 or more of the foregoing, used to encourage the use or to notify the availability or to promote the sale of any tobacco product or to promote smoking;

**‘trademark’** has the meaning given to it under the *Trademarks Act 2019*;

[def subst Act 6 of 2023 s 4, opn 7 June 2023]

**‘vape’** means a device used to inhale vapour containing nicotine including flavouring;

[def insrt Act 6 of 2023 s 4, opn 7 June 2023]

**‘vending machine’** means a machine or device that is constructed to contain tobacco products and which can automatically retail any tobacco product upon the insertion of a coin, token, banknote or similar object into the machine or device;

**‘waterpipe’** or **‘shisha’** or **‘hookah’** means a form of tobacco consumption that utilises a single or multi-stemmed instrument to smoke flavoured or non-flavoured tobacco, where smoke is designed to pass through water or other liquid before reaching the smoker.

[def insrt Act 6 of 2023 s 4, opn 7 June 2023]

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## **PART 1A — PROHIBITION ON MANUFACTURE OF TOBACCO PRODUCTS**

[Pt 1A insrt Act 6 of 2023 s 5, opn 7 June 2023]

### **2A Prohibition on manufacture of tobacco products**

- (1) A person shall not manufacture a tobacco product for a commercial purpose.
- (2) In this Section, *‘manufacture’* includes the production, assembly, preparation or making of a tobacco product.
- (3) A person who contravenes subsection (1) commits an offence and upon conviction is liable to a fine not exceeding \$20,000 or a term of imprisonment not exceeding 3 years or both.

[The next page is 120,801]

**PART 2 — PROHIBITION OF ADVERTISING AND PROMOTION OF  
TOBACCO PRODUCTS**

**3 Prohibition of tobacco including imitation tobacco product advertisements**

(1) A person who:

- (a) displays, exhibits, announces, broadcasts or telecasts, or causes or permits to be displayed, exhibited, announced, broadcast or telecast, or authorises the display, exhibition, announcement, broadcast or telecast to the public of a tobacco including imitation tobacco product advertisement;
  - (b) sells or distributes, or causes or permits to be sold or distributed, or authorises the sale or distribution of, any film, video tape or disk that contains a tobacco including imitation tobacco product advertisement;
  - (c) distributes, permits or causes to be distributed, or authorises the distribution to the public, of any leaflet or document that is or contains a tobacco including imitation tobacco product advertisement;
  - (d) prints or publishes, or causes or permits to be printed or published, or authorises the printing or publication of a tobacco including imitation tobacco product advertisement in any printed publication, book, magazine, leaflet, handbill, newspaper or other printed matter intended for the public;
  - (e) displays, or causes or permits to be displayed, a tobacco including imitation tobacco product in a way that is visible to the public at the point of sale of the tobacco including imitation tobacco product; or
  - (f) displays, or causes or permits to be displayed, a waterpipe, shisha or hookah, or other equipment for sale or use with tobacco including imitation tobacco or a similar substance by any person in a hospital, school, an enclosed workplace or an enclosed public area,
- commits an offence.

[subs (1) am Act 6 of 2023 s 6, opn 7 June 2023; Act 11 of 2024 s 5, opn 20 Aug 2024]

(2) Subsection (1) does not apply to:

- (a) a tobacco product advertisement in or on a package containing a tobacco product; or
- (b) any tobacco product advertisement included in any book, magazine, or newspaper printed outside the Republic, or in any radio or television transmission originating outside the Republic, or any film, video recording or visual disk originating outside the Republic, unless:
  - (i) the principal purpose of the book, magazine, newspaper, broadcast, telecast, film, video recording or visual disk is the promotion of the use of a tobacco product or smoking;
  - (ii) the book, magazine, newspaper, broadcast, telecast, film, video recording or visual disk is intended for sale, distribution or exhibition primarily in the Republic; or
  - (iii) in the case of a tobacco product advertisement in any radio or television transmission, the advertisement is targeted primarily at a Nauru audience.

- (3) Subsection (1) does not apply to the display of a price list of a tobacco product which may include the brand name or variant of the tobacco product.

[subs (3) subst Act 6 of 2023 s 6, opn 7 June 2023]

- (4) For the purposes of subsection (3), the price list shall not contain the name of the tobacco company or brand logo, colouring, slogan or other form of text or graphics which may be prescribed by regulations.

[subs (4) subst Act 6 of 2023 s 6, opn 7 June 2023]

- (5) A person who contravenes subsection (1) commits an offence and upon conviction is liable to:

- (a) in the case of an individual:
  - (i) forfeiture of any remaining tobacco products; and
  - (ii) a fine not exceeding \$2,000 or a term of imprisonment not exceeding 12 months or both; or
- (b) in the case of a body corporate, forfeiture of any remaining tobacco products and a fine not exceeding \$20,000.

[subs (5) insrt Act 6 of 2023 s 6, opn 7 June 2023]

- (6) A person who contravenes subsection (1):

- (a) is liable to pay a fixed penalty of:
  - (i) in the case of an individual, \$1,000; or
  - (ii) in the case of a body corporate, \$10,000; and
- (b) shall pay the fixed penalty within 14 days after the Tobacco Control Infringement Notice is served on the person by an authorised officer.

[subs (6) insrt Act 6 of 2023 s 6, opn 7 June 2023]

[s 3 am Act 11 of 2024 s 5, opn 20 Aug 2024]

## 4 **Prohibition on giving or distributing free samples or offering prizes**

- (1) A person shall not, for the purposes of inducing or promoting the sale of tobacco products, or smoking generally:
- (a) offer, supply or distribute to any person a free sample of a tobacco product;
  - (b) offer any gift or rebate or the right to participate in any contest, lottery or game to the purchaser of a tobacco product in consideration for the purchase of the tobacco product or to any person in consideration for the furnishing of evidence of such a purchase; or
  - (c) offer, supply or distribute to the public a free sample of a product that is not a tobacco product but that is intended to promote the sale of tobacco products, or smoking generally.
- (2) A person who contravenes subsection (1) commits an offence and upon conviction is liable to:
- (a) in the case of an individual:
    - (i) forfeiture of any remaining tobacco products; and
    - (ii) a fine not exceeding \$2,000 or a term of imprisonment not exceeding 12 months or both; or
  - (b) in the case of a body corporate, forfeiture of any remaining tobacco products and a fine not exceeding \$20,000.
- (3) A person who contravenes subsection (1):
- (a) is liable to pay a fixed penalty of:

- (i) in the case of an individual, \$1,000; or
- (ii) in the case of a body corporate, \$10,000; and
- (b) shall pay the fixed penalty within 14 days after the Tobacco Control Infringement Notice is served on the person by an authorised officer.

[s 4 subst Act 6 of 2023 s 7, opn 7 June 2023]

## **5 Prohibition on sponsorship**

- (1) A person shall not promote or publicise, or agree to promote or publicise, under a contract, agreement, undertaking or understanding with another person, whether or not legally binding:
  - (a) a tobacco product or a trademark or brand name, or part of a trademark or brand name, of a tobacco product; or
  - (b) the name or interests of a manufacturer or distributor of a tobacco product, whether or not the manufacturer or distributor also manufactures or distributes a product other than the tobacco product, in association directly or indirectly with the tobacco product, in exchange for a sponsorship, gift, prize, reward, scholarship or like benefit given or agreed to be given by any other person.
- (2) A person shall not give or agree to give any sponsorship, gift, prize, reward, scholarship or like benefit under a contract, agreement, undertaking or understanding with any other person, whether or not legally binding, in exchange for the promotion of, or an agreement to promote, a tobacco product or a name, interest, trademark or brand name of a tobacco product, or the name or interests of a manufacturer or distributor of a tobacco product, whether or not the manufacturer or distributor also manufactures or distributes a product other than the tobacco product, in association directly or indirectly with the tobacco product.
- (3) A manufacturer, wholesaler, distributor, importer or retailer of a tobacco product, whether an individual or body corporate, shall not provide a promotional discount of tobacco products.
- (4) A person who contravenes this Section commits an offence and upon conviction is liable to:
  - (a) in the case of an individual, a fine not exceeding \$5,000 or a term of imprisonment not exceeding 18 months or both; or
  - (b) in the case of a body corporate, a fine not exceeding \$25,000.

[s 5 subst Act 6 of 2023 s 8, opn 7 June 2023]

[The next page is 121,001]

## **PART 3 — PRODUCT REQUIREMENTS**

### **6 Information to be printed on packages of tobacco products — labelling**

- (1) A person shall not sell or import any tobacco product in any package that:
  - (a) does not comply with labelling requirements under regulations;
  - (b) contains any information which is likely to represent that the tobacco product is less harmful than other similar products;
  - (c) contains signs, colours, designs or other forms or patterns of such designs as a substitute for any prohibited content on such packaging;
  - (d) includes descriptors depicting flavours; or
  - (e) has written or endorsed on it an expiry date.
- (2) A person who contravenes subsection (1) commits an offence and upon conviction is liable to:
  - (a) in the case of an individual:
    - (i) forfeiture of any remaining tobacco products; and
    - (ii) a fine not exceeding \$2,000 or a term of imprisonment not exceeding 12 months or both; or
  - (b) in the case of a body corporate, forfeiture of any remaining tobacco products and a fine not exceeding \$20,000.
- (3) For avoidance of any doubt, any labelling required under regulations including health warnings does not remove or diminish the liability of a seller or importer of tobacco products.

[s 6 subst Act 6 of 2023 s 9, opn 7 June 2023]

### **7 Restrictions on tar and nicotine content**

- (1) The level of tar or nicotine in any tobacco product shall not exceed 15 milligrams and the level of nicotine shall not exceed 1.5 milligrams.  
[subs (1) am Act 6 of 2023 s 10, opn 7 June 2023]
- (1A) A person shall not sell or import any tobacco product that displays the quantitative information on emission yields.  
[subs (1A) insrt Act 6 of 2023 s 10, opn 7 June 2023]
- (2) A person who sells any tobacco product that contains tar or nicotine in excess of the level prescribed by subsection (1), commits an offence.

[subs (2) am Act 6 of 2023 s 10, opn 7 June 2023]

### **8 Minimum package size**

- (1) No person shall sell cigarettes unless they are contained in an unbroken package containing no fewer than 20 cigarettes.
- (2) A person who sells any cigarette that is not contained within an unbroken package prescribed by subsection (1), commits an offence.

[The next page is 121,201]



**PART 4 — RESTRICTIONS ON SALE OF TOBACCO PRODUCTS AND  
PRODUCTS RESEMBLING TOBACCO PRODUCTS**

**9 Prohibition on supplying tobacco to persons under 20 years**

- (1) A person who:
- (a) supplies any tobacco product to a person under the age of 20 years; or
  - (b) purchases a tobacco product for the use of a person under the age of 20 years,
- commits an offence.

[subs (1) am Act 6 of 2023 s 11, opn 7 June 2023]

- (2) The term ‘*supplies*’ in subsection (1)(a), applies only to the supply of a tobacco product by a person who has a direct or indirect pecuniary interest in the sale of tobacco products.

- (3) Every retailer of tobacco products shall post prescribed signs in the prescribed manner stating that it is illegal to sell or supply any tobacco product to persons under the age of 20 years, and any failure to comply with this requirement shall constitute an offence.

[subs (3) am Act 6 of 2023 s 11, opn 7 June 2023]

- (4) It is a defence to a prosecution under subsection (1), if a person proves that he or she had taken all reasonable precautions to ensure that the tobacco product was not sold to a person under the age of 20 years.

[subs (4) am Act 6 of 2023 s 11, opn 7 June 2023]

- (5) A person who contravenes subsection (1) commits an offence and upon conviction is liable to:

- (a) in the case of an individual:
  - (i) forfeiture of any remaining tobacco products; and
  - (ii) a fine not exceeding \$2,000 or a term of imprisonment not exceeding 12 months or both; or
- (b) in the case of a body corporate, forfeiture of any remaining tobacco products and a fine not exceeding \$20,000.

[subs (5) subst Act 6 of 2023 s 11, opn 7 June 2023]

- (6) A person who contravenes subsection (1):

- (a) is liable to pay a fixed penalty of:
  - (i) in the case of an individual, \$1,000; or
  - (ii) in the case of a body corporate, \$10,000; and
- (b) shall pay the fixed penalty within 14 days after the Tobacco Control Infringement Notice is served on the person by an authorised officer.

[subs (6) subst Act 6 of 2023 s 11, opn 7 June 2023]

- (7) [subs (7) rep Act 6 of 2023 s 11, opn 7 June 2023]

- (8) [subs (8) rep Act 6 of 2023 s 11, opn 7 June 2023]

**10 Prohibition on supply from vending machines**

A person who sells or supplies tobacco products from a vending machine commits an offence and upon conviction is liable to a fine of \$1,000 and forfeiture of the vending machine.

## 10A Prohibition of online sale of tobacco products

- (1) A person shall not sell or advertise for sale in, or import to, the Republic any tobacco product online or through electronic or digital communication or an electronic system.
- (2) A person who contravenes subsection (1) commits an offence and upon conviction is liable to:
  - (a) in the case of an individual, forfeiture of any remaining tobacco products and a fine not exceeding \$2,000 or a term of imprisonment not exceeding 12 months or both; or
  - (b) in the case of a body corporate, forfeiture of any remaining tobacco products and a fine not exceeding \$20,000.
- (3) For the purposes of proving the offence under subsection (1), any form of electronic or digital communication or any form of payment generated from an electronic system is admissible.
- (4) In this Section:

***‘electronic or digital communication’*** means any form of communication which is transmitted electronically or digitally and includes any text message, writing, post, photograph, picture, recording, telephone, email or any other matter that is communicated electronically or digitally; and

***‘electronic system’*** means a device or a group of inter-connected or related devices, including the Internet, one or more of which, pursuant to a program, performs automatic processing of data or any other function.

***‘device’*** includes:

  - (a) a component of an electronic system such as a computer, mobile phone, graphic card and memory chip;
  - (b) a storage component such as a hard drive, memory card, compact disc and tape;
  - (c) an input device such as a keyboard, mouse, track pad, scanner and digital camera; and
  - (d) an output device such as a printer and screen;

[s 10A insrt Act 6 of 2023 s 12, opn 7 June 2023]

## 11 Prohibition on supply from restaurants

- (1) A person shall not sell, offer for sale or supply any tobacco product in a restaurant.
- (2) A person who contravenes subsection (1) commits an offence and upon conviction is liable to:
  - (a) in the case of an individual:
    - (i) forfeiture of any remaining tobacco products; and
    - (ii) a fine not exceeding \$2,000 or a term of imprisonment not exceeding 12 months or both; or
  - (b) in the case of a body corporate, forfeiture of any remaining tobacco products and a fine not exceeding \$20,000.
- (3) A person who contravenes subsection (1):
  - (a) is liable to pay a fixed penalty of:
    - (i) in the case of an individual, \$1,000; or
    - (ii) in the case of a body corporate, \$10,000; and

- (b) shall pay the fixed penalty within 14 days after the Tobacco Control Infringement Notice is served on the person by an authorised officer.

[s 11 subst Act 6 of 2023 s 13, opn 7 June 2023]

## 12 Prohibition on confectionery or toys resembling tobacco products

- (1) A person shall not sell, or import into the Republic for sale, confectionery, or a toy, that is designed to resemble a tobacco product.
- (2) A person shall not sell, or import into the Republic for sale, confectionery, or a toy, contained in packaging that is designed to resemble a tobacco product or the packaging of a tobacco product.
- (2A) A person shall not sell or import into the Republic for sale or distribution:
  - (a) any product that is not a tobacco product but that has the brand name, logo, trademark or other similar association of a tobacco product; or
  - (b) any counterfeit tobacco product.

[subs (2A) insrt Act 6 of 2023 s 14, opn 7 June 2023]

- (3) For the purposes of any law regulating the importation of goods, a thing described in subsection (1), (2) or (2A) is a prohibited import.

[subs (3) am Act 6 of 2023 s 14, opn 7 June 2023]

- (4) A person who contravenes subsection (1), (2) or (2A) commits an offence and upon conviction is liable to:
  - (a) in the case of an individual:
    - (i) forfeiture of any remaining tobacco products; and
    - (ii) a fine not exceeding \$2,000 or a term of imprisonment not exceeding 12 months or both; or
  - (b) in the case of a body corporate, forfeiture of any remaining tobacco products and a fine not exceeding \$20,000.

[subs (4) insrt Act 6 of 2023 s 14, opn 7 June 2023]

- (5) A person who contravenes subsection (1), (2) or (2A):
  - (a) is liable to pay a fixed penalty of:
    - (i) in the case of an individual, \$1,000; or
    - (ii) in the case of a body corporate, \$10,000; and
  - (b) shall pay the fixed penalty within 14 days after the Tobacco Control Infringement Notice is served on the person by an authorised officer.

[subs (5) subst Act 6 of 2023 s 14, opn 7 June 2023]

- (6) In this Section, '**counterfeit tobacco product**' means a tobacco product that imitates, mimics, or copies a tobacco product without right and passes off as genuine.

[subs (6) insrt Act 6 of 2023 s 14, opn 7 June 2023]

## 12A Prohibition on imitation tobacco products

- (1) A person shall not manufacture, possess, distribute or sell imitation tobacco products in the Republic.
- (2) A person shall not import or export imitation tobacco products into or outside of the Republic.
- (3) For the purposes of any law regulating the importation of goods, a imitation tobacco product is a prohibited import.

- (4) A person who contravenes subsection (1) and (2) commits an offence and upon conviction is liable to:
- (a) in the case of an individual:
    - (i) forfeiture of any tobacco imitation products; and
    - (ii) a fine not exceeding \$2,000 or a term of imprisonment not exceeding 12 months or both; or
  - (b) in the case of a body corporate, forfeiture of any imitation tobacco products and a fine not exceeding \$20,000.

[s 12A insrt Act 11 of 2024 s 6, opn 20 Aug 2024]

[The next page is 121,301]

## PART 4A — PROHIBITIONS OF E-CIGARETTES AND E-CIGARETTE ACCESSORIES

[Pt 4A insrt Act 11 of 2024 s 7, opn 20 Aug 2024]

### 12B Definitions

In this Part:

**‘advertise’** includes printing, displaying, exhibiting, announcing, broadcasting, telecasting through film, video tape, disk, leaflet, document, book, magazine, handbill, newspaper or other printed matter or displays or causes or permits to be displayed, an e-cigarette or e-cigarette accessory in a way that is visible to the public or promoting for any purpose;

**‘e-cigarette’** means a device whether or not containing nicotine or tobacco that generates or releases or is designed or intended to generate or release, by electronic means, an aerosol or vapour for inhalation by its user in a way that resembles, or produces an experience similar to, smoking and includes vape or a device which resembles a toy, food, drink, cartoon character, animal, musical instrument, vehicle or household or any other object;

**‘e-cigarette accessory’** means any of the following:

- (a) a cartridge, capsule, pod or other vessel that contains or that is designed or intended to contain, a liquid, gas, aerosol, vapour or other substance for use in an e-cigarette;
- (b) such a liquid, gas, aerosol, vapour or other substance whether or not containing nicotine or tobacco;
- (c) a heating element designed or intended for use in an e-cigarette; or
- (d) a battery specifically designed or intended for use in an e-cigarette; and

**‘sponsorship’** includes:

- (a) the public attribution, acknowledgment, association or identification of an organisation, body or tobacco manufacturer, importer, seller, brand, product with, on, or in connection with:
  - (i) an entertainment, sporting, recreational, educational, cultural, or other public event or work;
  - (ii) a person or team participating in such an event or work, including his or her equipment, clothing, and accessories;
  - (iii) a service provided or contribution made by a tobacco manufacturer importer or seller; or
  - (iv) a building, institution, stadium, organisation or other entity that is not a tobacco manufacturer, importer or seller; and
- (b) the use of e-cigarettes or e-cigarette accessories as a gift, prize, reward, scholarship or like benefit in relation to any matter under paragraph (a).

### 12C Prohibition on manufacture of e-cigarettes and e-cigarette accessories

- (1) A person shall not manufacture e-cigarettes or e-cigarette accessories in the Republic, for any purpose.

- (2) In this Section, ‘*manufacture*’ includes the production, assembly, preparation or making of electronic cigarettes, vape and imitation tobacco product.
- (3) A person who contravenes subsection (1) commits an offence and upon conviction is liable to a fine not exceeding \$20,000 or a term of imprisonment not exceeding 3 years or both.

#### **12D Prohibition of possession, sale or supply of e-cigarettes or e-cigarette accessories**

- (1) A person shall not possess, sell or supply an e-cigarette or e-cigarette accessory.
- (2) A person who contravenes subsection (1) commits an offence and is liable upon conviction:
  - (a) in the case of an individual, a fine not exceeding \$5,000 or a term of imprisonment not exceeding 18 months or both; or
  - (b) in the case of a body corporate, a fine not exceeding \$25,000.

#### **12E Prohibition of advertising of e-cigarettes and e-cigarette accessories**

- (1) A person shall not advertise an electronic cigarette or e-cigarette accessory.
- (2) A person who contravenes subsection (1) commits an offence and is liable upon conviction:
  - (a) in the case of an individual, a fine not exceeding \$5,000 or a term of imprisonment not exceeding 18 months or both; or
  - (b) in the case of a body corporate, a fine not exceeding \$25,000.

#### **12F Prohibition of sponsorship relating to e-cigarettes and e-cigarette accessories**

- (1) A person shall not provide sponsorship relating to e-cigarettes and e-cigarette accessories.
- (2) A person who contravenes subsection (1) commits an offence and is liable upon conviction:
  - (a) in the case of an individual, a fine not exceeding \$5,000 or a term of imprisonment not exceeding 18 months or both; or
  - (b) in the case of a body corporate, a fine not exceeding \$25,000.

#### **12G Prohibition of import of e-cigarettes and e-cigarette accessories**

- (1) A person shall not import an electronic cigarette or e-cigarette accessory whether for commercial purpose or personal use.
- (2) A person who contravenes subsection (1) commits an offence and is liable upon conviction:
  - (a) in the case of an individual, a fine not exceeding \$5,000 or a term of imprisonment not exceeding 18 months or both; or
  - (b) in the case of a body corporate, a fine not exceeding \$25,000.
- (3) For the purposes of any law regulating the importation of goods, an e-cigarette or e-cigarette accessory is a prohibited import.

**12H Licence or authorisation shall not be issued for e-cigarettes and e-cigarette accessories**

A licence or authorisation under Part 5A shall not be issued or granted for the manufacture, importation, distribution, selling, advertising of e-cigarettes or e-cigarettes accessories in Nauru.

**12I Prohibition of smoking of e-cigarettes**

- (1) A person shall not smoke an e-cigarette in any place in the Republic.
- (2) A person who contravenes subsection (1) commits an offence and is liable upon conviction to a fine not exceeding \$5,000 or a term of imprisonment not exceeding 18 months or both.

**12J Enforcement provisions in relation to e-cigarettes and e-cigarette accessories**

For the purpose of enforcement of this Part, Sections 19A to 29 of this Act shall apply in relation to e-cigarettes and e-cigarette accessories.

[The next page is 121,401]



## PART 5 — SMOKING IN PUBLIC PLACES AND WORKPLACES

### 13 Prohibition on smoking in enclosed public places and enclosed workplaces

- (1) A person shall not smoke a tobacco product in any school, hospital, enclosed workplace or enclosed public place.

[subs (1) subst Act 6 of 2023 s 15, opn 7 June 2023]

- (2) Where a person smokes a tobacco product with the approval of the owner or occupier of a school, hospital, enclosed workplace or enclosed public place in contravention of subsection (1), the owner or occupier is deemed to have contravened subsection (1).

[subs (2) subst Act 6 of 2023 s 15, opn 7 June 2023]

- (3) It is a defence to a prosecution under subsection (2), if the defendant proves that the defendant did not provide an ashtray, matches, a lighter or any other thing designed to facilitate smoking where the contravention occurred and that:

- (a) the defendant was not aware, and could not reasonably be expected to have been aware, that the contravention was occurring; or
- (b) the defendant requested the person contravening to stop smoking, and informed the person that the person was committing an offence.

- (4) A person who contravenes subsection (1) commits an offence and upon conviction is liable to:

- (a) in the case of an individual:
  - (i) forfeiture of any remaining tobacco products; and
  - (ii) a fine not exceeding \$2,000 or a term of imprisonment not exceeding 12 months or both; or
- (b) in the case of a body corporate, forfeiture of any remaining tobacco products and a fine not exceeding \$20,000.

[subs (4) insrt Act 6 of 2023 s 15, opn 7 June 2023]

- (5) A person who contravenes subsection (1):

- (a) is liable to pay a fixed penalty of:
  - (i) in the case of an individual, \$1,000; or
  - (ii) in the case of a body corporate, \$10,000; and
- (b) shall pay the fixed penalty within 14 days after the Tobacco Control Infringement Notice is served on the person by an authorised officer.

[subs (5) insrt Act 6 of 2023 s 15, opn 7 June 2023]

### 14 Enclosed workplaces or enclosed public places — display of signs

- (1) An owner or occupier of an enclosed workplace or an enclosed public place shall display a ‘*no smoking*’ sign at the enclosed workplace or enclosed public place.
- (2) The size and content of the sign under subsection (1) shall be as prescribed by regulations.
- (3) A person who contravenes subsection (1) commits an offence and upon conviction is liable to:

- (a) in the case of an individual:
    - (i) forfeiture of any remaining tobacco products; and
    - (ii) a fine not exceeding \$2,000 or a term of imprisonment not exceeding 12 months or both; or
  - (b) in the case of a body corporate, forfeiture of any remaining tobacco products and a fine not exceeding \$20,000.
- (4) A person who contravenes subsection (1):
- (a) is liable to pay a fixed penalty of:
    - (i) in the case of an individual, \$1,000; or
    - (ii) in the case of a body corporate, \$10,000; and
  - (b) shall pay the fixed penalty within 14 days after the Tobacco Control Infringement Notice is served on the person by an authorised officer.

[s 14 subst Act 6 of 2023 s 16, opn 7 June 2023]

## 15 Smoking in bars, restaurants, cafes and hotels

- (1) Pursuant to Section 1(3) and the Schedule, all bars, restaurants and cafes and all public spaces within hotels shall, 4 years and 3 months after certification, become enclosed public places for the purposes of this Act.
- (2) The licensee of any bar, restaurant, café or hotel may, prior to the date on which such places become enclosed public places under this Act, adopt a 'no smoking' policy in respect of all or part of their business premises, and, provided that if such policy is adopted, signs are displayed that comply with the requirements prescribed for the purposes of Section 14(2) and have been so displayed for not less than 4 weeks, the 'no smoking' policy shall be enforced in accordance with this Act as if the relevant bar, restaurant, café or hotel or the respective part thereof was an enclosed public place.

## 16 Interim definitions of enclosed public place and enclosed workplace

- (1) Subject to Section 17(3), from the date of certification until 27 months after certification, '**enclosed public place**' shall mean any room or indoor space in any government building, and any other indoor public facility including public transport, and '**enclosed workplace**' shall mean any room or indoor space that is occupied by an employer and that employees usually frequent during the course of their employment but shall not include a vehicle or any place of residence occupied by an employer or an employee.
- (2) From 27 months after certification until 4 years and 3 months after certification, '**enclosed public place**' shall mean any place inside or within the grounds of any government building (including buildings of state owned enterprises and government instrumentalities), airport terminal or other public building or facility, and public transport, but shall not include any designated smoking area, and '**enclosed workplace**' shall mean any place occupied by an employer and that employees usually attend during the course of their employment that is enclosed by a roof and by two or more walls or sides, including any veranda, balcony or corridor with a roof and two or more walls that is in or adjoined to any such place, but shall not include restaurants, bars, cafes or hotels or any place of residence occupied by an employer or an employee nor any designated smoking area.

**17 Approval of designated smoking area**

- (1) An occupier of any public place or workplace may request an authorised officer to inspect any area that the occupier seeks to have approved as a designated smoking area, and where an occupier makes such request, the authorised officer shall inspect the area and may issue a certificate of approval under subsection (2) for an area at or within such public place or workplace to be a designated smoking area, provided that:
- (a) there shall be no more than one designated smoking area in any public place or workplace unless such public place or workplace covers an area greater than 200 square metres;
  - (b) a designated smoking area:
    - (i) is outdoors and is not covered by a roof or roof-like structure;
    - (ii) is not within 10 metres from any door or window;
    - (iii) occupies not more than 15 square metres;
    - (iv) has sufficient airflow which will minimise exposure to passive smoking;
    - (v) is properly equipped with rubbish bins and ashtrays; and
    - (vi) is clearly signposted as a designated smoking area; and
  - (c) [Repealed]
  - (d) the occupier of any public place or workplace that has a designated smoking area shall ensure that health warning signs in the prescribed form are posted in the designated smoking areas.

[subs (1) am Act 6 of 2023 s 17, opn 7 June 2023]

- (2) Where an authorised officer is satisfied that a proposed designated smoking area complies with the requirements in subsection (1), he or she shall issue a certificate of approval to the occupier which certifies that the requirements of subsection (1) have been complied with and which clearly describes the location and boundaries of the designated smoking area, and shall provide a copy of the certificate of approval to the Minister.
- (3) Notwithstanding the requirements of subsections (1) and (2), an authorised officer may issue a certificate of approval for a designated smoking area within the transit and departure lounge of the airport terminal, provided he or she is satisfied that the proposed designated smoking area is sufficiently separated or sealed off from other public areas within the airport terminal so the risk of involuntary passive smoking by those outside such designated smoking area, is remote.

[The next page is 121,501]

## PART 5A — LICENCES

[Pt 5A insrt Act 6 of 2023 s 18, opn 7 June 2023]

### 17A Licence

- (1) A person shall not import, distribute or sell tobacco products for a commercial purpose without a licence issued under this Part.
- (2) A person who contravenes subsection (1) commits an offence and upon conviction is liable to:
  - (a) in the case of an individual:
    - (i) forfeiture of any remaining tobacco products; and
    - (ii) a fine not exceeding \$2,000 or a term of imprisonment not exceeding 12 months or both; or
  - (b) in the case of a body corporate, forfeiture of any remaining tobacco products and a fine not exceeding \$50,000.

### 17B Classes of licence

On receipt and consideration of an application for a licence, the Secretary may issue a licence in any one of the following classes:

- (a) importer licence;
- (b) distributor licence; and
- (c) retail licence.

### 17C Importer licence

An importer licence authorises the licensee to import tobacco products including any ingredient, equipment and machinery of tobacco products under the conditions set out in the licence.

### 17D Distributor licence

A distributor licence authorises the licensee to sell or distribute to retailers tobacco products in cartons under the conditions set out in the licence.

### 17E Retail licence

A retail licence authorises the licensee to sell to consumers tobacco products under the conditions set out in the licence.

### 17F Application for a licence under this Part

- (1) An application for a licence under this Part shall be:
  - (a) in the prescribed form;
  - (b) accompanied by evidence of payment of the prescribed fee;
  - (c) accompanied by:
    - (i) in the case of a partnership, a certificate of registration of partnership issued under the *Partnership Act 2018*;
    - (ii) in the case of an individual, partnership or corporation, a current business licence issued under the *Business Licences Act 2017*; and
    - (iii) in the case of a corporation, an incorporation certificate issued under the *Corporations Act 1972*; and

- (d) accompanied by an import licence issued under the *Customs Act 2014*, if applying for an importer licence under this Part.
- (2) The Secretary shall not consider an application for a licence if the prescribed fee required under subsection (1) has not been paid.
- (3) Where information provided by an applicant under this Section is false, misleading or defective in any particular:
  - (a) the applicant commits an offence and upon conviction is liable to a fine not exceeding \$2,000; and
  - (b) if the applicant has been issued a licence, the licence is deemed to have been cancelled.

## **17G Consideration of application**

- (1) The Secretary shall consider the application and inform the applicant of the decision within 7 working days of the lodgement of the application and either:
  - (a) issue a licence; or
  - (b) advise the applicant in writing that the application has been refused and provide reasons for the refusal.
- (2) Where an application is rejected on the grounds that it does not comply with the provisions of this Act, the applicant may appeal in writing to the Minister against that decision and if the Minister is satisfied that the provisions of this Act are not contravened, the Minister may direct that the licence be issued.

## **17H Suspension of licence**

- (1) The Secretary may suspend a licence if:
  - (a) the licensee has contravened a provision of this Act;
  - (b) the licensee has contravened a condition of the licence; or
  - (c) the licensee has been convicted of an offence under this Act.
- (2) Before suspending a licence under subsection (1):
  - (a) the licensee shall be given a reasonable opportunity to be heard of the intended suspension; and
  - (b) the Secretary shall provide the licensee with the reasons for which the licence is to be suspended.

## **17I Cancellation of licence**

- (1) The Secretary may cancel a licence if it is in the best interest of the public to do so.
- (2) Without limiting subsection (1), in determining whether it is in the public interest to cancel a licence, the Secretary shall consider whether:
  - (a) the licensee has contravened a provision of this Act;
  - (b) the licensee has contravened a condition of the licence;
  - (c) the licensee has been found guilty or convicted of an offence under this Act; or
  - (d) the circumstances of that contravention are such that the licence shall be cancelled.
- (3) Before cancelling the licence under subsection (1), the licensee shall be given a reasonable opportunity to be heard and the Secretary shall provide the licensee with the reasons for which his or her licence is to be cancelled.

**17J Duration and renewal of licence**

- (1) A licence is valid for 12 months from the date the licence is granted.
- (2) An application for the renewal of a licence under this Part shall be made in the prescribed form and accompanied with evidence of payment of the prescribed fee at least 30 days prior to its expiration.

**17K Transfer or assignment of licence**

- (1) A licensee shall not transfer or assign a licence issued under this Part except with the prior written approval of the Secretary.
- (2) A licensee seeking approval of the Secretary under this Section shall apply in the prescribed form and provide evidence of payment of the prescribed fee.

**17L Licences to be displayed**

- (1) A licence shall be displayed in a conspicuous place in or at the licensee's place of business.
- (2) A person who contravenes subsection (1) commits an offence and upon conviction is liable to:
  - (a) in the case of an individual:
    - (i) forfeiture of any remaining tobacco products; and
    - (ii) a fine not exceeding \$2,000 or a term of imprisonment not exceeding 12 months or both; or
  - (b) in the case of a body corporate, forfeiture of any remaining tobacco products and a fine not exceeding \$20,000.
- (3) A person who contravenes subsection (1):
  - (a) is liable to pay a fixed penalty of:
    - (i) in the case of an individual, \$1,000; or
    - (ii) in the case of a body corporate, \$10,000; and
  - (b) shall pay the fixed penalty within 14 days after the Tobacco Control Infringement Notice is served on the person by an authorised officer.

[The next page is 121,601]



## PART 6 — MISCELLANEOUS

### 18 Appropriation for tobacco control activities

- (1) Each financial year, a reasonable portion of the total import duty revenue collected on tobacco products in the previous financial year shall be appropriated for the purposes of tobacco control activities.
- (2) In subsection (1), the expression ‘*tobacco control activities*’ means any measure designed to reduce the harm caused by tobacco products, including monitoring and enforcement of this Act and regulations, tobacco education activities, and activities designed to encourage individuals to quit smoking and to assist people in quitting smoking.

### 19 Authorised officer

- (1) The Minister may, by notice in the Gazette, prescribe a person or persons of a specified class or description to be authorised officers for the purposes of this Act.
- (2) All health inspectors and food inspectors are authorised officers for the purposes of this Act.
- (3) An authorised officer shall, upon request, provide identification that he or she is an authorised officer.

### 19A Tobacco Control Infringement Notices

- (1) An authorised officer may issue a Tobacco Control Infringement Notice to a person who:
  - (a) commits an offence under this Act that attracts a fine not exceeding \$2,000; and
  - (b) is liable to pay a fixed penalty.
- (2) The Cabinet may make regulations prescribing:
  - (a) fixed penalty offences for which fixed penalties shall be imposed;
  - (b) fixed penalties for corresponding fixed penalty offences;
  - (c) the Tobacco Control Infringement Notice which an authorised officer may serve on a person for a fixed penalty offence;
  - (d) additional penalties to be imposed by the court on a person who has failed to pay the fixed penalty in accordance with a Tobacco Control Infringement Notice;
  - (e) the procedures for dealing with a Tobacco Control Infringement Notice; and
  - (f) any other matter which shall ensure the effective enforcement of a Tobacco Control Infringement Notice.

[s 19A insrt Act 6 of 2023 s 19, opn 7 June 2023]

### 20 Offences and penalties

A person who contravenes or fails to comply with any provision of this Act creating an offence, upon conviction is liable, where there is no penalty provided; to a fine of:

- (a) in the case of an individual, \$50 for a first offence and \$250 for a second or subsequent offence; and

- (b) in the case of a body corporate, \$500 for a first offence and \$1,000 for a second or subsequent offence.

## **21 Offences by corporate bodies and trading businesses**

- (1) Where a body corporate commits an offence under this Act, each director or other person concerned in the management of the body corporate is also guilty of, and liable to the penalty provided for that offence, unless the director or other person proves that he or she exercised reasonable diligence to prevent the commission of the offence.
- (2) Where an offence is committed under Section 3, 4, 6, 7, 9(1)(a), 9(3), 9(8), 10, 11, 12 or 14(1) by a business that holds a trading licence, whether that business is incorporated or not, both the licensee and the person in charge of the day-to-day management and trade of the business shall be liable to the respective penalties, provided that where one person is both the licensee and the manager, he or she shall not be penalised twice for the same offence.

## **22 Prosecution**

Prosecution for an offence under this Act may be brought by:

- (a) the Director of Public Prosecutions;
- (b) or on behalf of the Minister;
- (c) a member of the police; or
- (d) an authorised officer.

## **23 Powers of entry, search and seizure**

- (1) For the purposes of this Act, an authorised officer may at all reasonable times:
  - (a) enter any premises he or she knows or reasonably suspects:
    - (i) are being used for the production, manufacture, assembly, preparation, storage or sale of any tobacco product, tobacco product package or tobacco product advertisement; and
    - (ii) have been or are being or are likely to be used by a person in connection with a contravention of this Act;
  - (b) enter any premises where he or she knows or reasonably suspects that records are kept relating to the sale or manufacture of tobacco products or to tobacco advertisements in contravention of this Act;
  - (c) enter any premises which he or she knows or reasonably suspects are being used by a person for the printing, or as an office in connection with the printing, of any newspaper or other publication or for the manufacture or distribution of any videotape or visual disk which contravenes this Act;
  - (d) enter any broadcasting or television station which he or she knows or reasonably suspects is associated with any contravention of this Act;
  - (e) in any premises entered by him or her:
    - (i) search for, examine, take possession of or make copies of or extracts from records relating to any tobacco product or tobacco product advertisement or package supplied or to be supplied or relating to any matter the subject of an investigation under this Act;
    - (ii) search for and examine goods found on such premises;

- (iii) seize without payment any tobacco product or tobacco product package or advertisement that contravenes this Act or which he or she reasonably believes or suspects contravenes this Act;
  - (iv) seize without payment any brochures, leaflets, books, writing, documents or other materials that he or she knows or reasonably suspects have been, are being, or are likely to be used to advertise, promote, publicise or package any tobacco product in contravention of this Act;
  - (v) open any room, place or package that he or she knows or reasonably suspects contains any tobacco product or tobacco product advertisement; and
  - (vi) question with respect to matters under this Act, a person he or she finds on such premises; and
- (f) make such inquiry and examination as he or she believes to be necessary or desirable to assist the discharge or exercise of any function or power under this Act to ascertain whether any contravention of this Act has been, is being or is likely to be committed.
- (2) Subsection (1) does not authorise forcible entry by an authorised officer to any premises except under the authority of a warrant obtained pursuant to subsection (3).
- (3) A Resident Magistrate, if satisfied upon the information of an authorised officer that there is reasonable cause to suspect that any place has been or is being or is likely to be used in connection with a contravention of this Act, or for the keeping of records relating to a contravention of this Act, may issue a search warrant directing the authorised officer to enter the place specified in the search warrant for the purpose of exercising the powers conferred on an authorised officer under this Act.
- (4) For the purpose of gaining entry to any place, an authorised officer may call in aid such persons as he or she considers necessary.
- (5) A search warrant issued under subsection (3) is, for a period of 1 month from its issue, sufficient authority:
  - (a) to the authorised officer to whom it is directed, and to all persons acting in aid of the officer, to enter the place specified in the search warrant; and
  - (b) to the authorised officer to whom it is directed to exercise in respect of the place specified in the search warrant all the powers conferred on an authorised officer by this Act.
- (6) Where an authorised officer has taken possession of records or of other property for the purposes of this Act, he or she may:
  - (a) in the case of records, retain them for as long as necessary for those purposes but the person otherwise entitled to possession of the records, if he or she so requests, is entitled to be furnished, as soon as practicable, with a copy certified by the authorised officer to be a true copy and such a certified copy shall be received as evidence of the matters contained in it as if it were the original; or
  - (b) in the case of other property subject to this Act, retain the property for as long as necessary for those purposes, and thereafter dispose of it as the court directs, or, if no prosecution results in relation to such property, return the property to the person from whom it was taken.

## 24 Power to obtain information

- (1) Where an authorised officer has reasonable cause to suspect that a person has information or records in his or her possession that may be relevant to the operation or enforcement of this Act or to the investigation of a suspected contravention of this Act, he or she may require that person, either by oral or written requisition, to provide:
  - (a) any such information; or
  - (b) any such records or copies of the same in the person's possession.
- (2) For the purpose of subsection (1), a person shall be taken to be in possession of:
  - (a) information, if the person has the information or is entitled to access to the information; and
  - (b) records, if the person has them in his or her possession or under his or her control in any place, whether for his or her own use or benefit or for another's use or benefit and although another person has the actual possession or custody of the records.
- (3) A requisition made under subsection (1), may require that the information or records or copies be provided:
  - (a) to the authorised officer or another authorised officer or to an officer of a specified department of the Government;
  - (b) at the place the requisition is made or at another place;
  - (c) immediately or at, by or within, a time specified;
  - (d) in person, or by mail or in another specified manner;
  - (e) by means of, or accompanied by, verification in the form of an affidavit; and
  - (f) in the case of information, orally or in writing.
- (4) A person shall not without reasonable cause:
  - (a) refuse or fail to provide any information, or produce records or a copy as required under this Section; or
  - (b) in response to a requisition made under this Section, provide information, or produce records or copies that is or are false or misleading in a material particular.
- (5) Where a person records or stores any matter by means of a mechanical, electronic or other device, the duty imposed by this Section to produce any records containing those matters shall include a duty to produce the matters in written form if that is demanded.
- (6) A person required to produce a copy of any records under this Section, shall produce a clear reproduction of the records.
- (7) An authorised officer may take notes or copies of or extracts from records or a copy of any records produced under this Section.
- (8) A person who without reasonable cause:
  - (a) fails to provide information, records or copies required under this Section; or
  - (b) provides or produces in response to a requisition under this Section, information, records or copies, that is or are false or misleading in a material particular,commits an offence.

## 25 Continuing offences

Where a person commits an offence by failing to provide information or to produce records or a copy of any records required under Section 24:

- (a) the obligation to provide the information or produce the records, or copies, continues until the person complies with the requirement notwithstanding that in a particular case a time was specified at, by or within which compliance was required and that time has passed;
- (b) the person commits a continuing offence in respect of each day after the day of conviction during which the failure to comply with the requisition continues;
- (c) the person is liable to a fine of \$50 for each day during which the offence continues; and
- (d) the person may be prosecuted from time to time in respect of the continuing offence, notwithstanding prior conviction for the commission of the initial offence.

## **26 Obstruction**

- (1) A person who obstructs an authorised officer in the exercise of his or her powers under this Act, commits an offence.
- (2) For the purposes of this Act, a person obstructs an authorised officer in the exercise of his or her powers under this Act, if he or she:
  - (a) assaults, abuses, intimidates or insults the authorised officer or any other person assisting the authorised officer in the exercise of his or her powers under this Act;
  - (b) directly or indirectly prevents or attempts to prevent a person from being questioned by an authorised officer or from providing under this Act, any information, records or copies; or
  - (c) in any other way obstructs or attempts to obstruct an authorised officer in the exercise of his or her powers under this Act.

## **27 Directions may be issued to ensure compliance**

- (1) Where:
  - (a) any tobacco product, package, label, tobacco product advertisement, shop or retail place, restaurant, enclosed public place or enclosed workplace or other place or thing does not comply with the provisions of this Act; or
  - (b) any provision of this Act, has not been complied with,an authorised officer may, in writing, direct a person who has contravened the provision by such non-compliance to take, within a specified time not exceeding 14 days, such steps as may be specified to prevent any further contravention and to remedy the matters in respect of which the non-compliance has occurred.
- (2) The issue of a direction under subsection (1), does not affect any proceeding under this Act which has been or may be taken for the non-compliance.
- (3) A person to whom a direction is issued under subsection (1), and who does not comply with the direction, commits an offence.

## **28 Removal of advertisements and destruction of tobacco products**

- (1) Where a person is convicted of an offence under Section 3, the court, in addition to any other penalty, may order:

- (a) that any advertisement be removed or obscured or destroyed by an authorised officer; and
  - (b) that the person convicted shall pay the reasonable costs incurred in removing or obscuring or destroying any advertisement.
- (2) Where a person is convicted of an offence under Section 6, 7 or 8, the court, in addition to any other penalty, may order:
- (a) that the tobacco product be confiscated and destroyed by an authorised officer, and
  - (b) that the person convicted shall pay the reasonable costs incurred in confiscating and destroying the tobacco product.
- (3) Costs payable under subsection (1) or (2), may be recovered in the same way as a fine.

## 29 **Contracts, agreements or undertaking unenforceable**

- (1) A contract, agreement, undertaking or understanding that is in effect when this Act comes into force cannot, to the extent to which it is inconsistent with this Act, be enforced by a party thereto or by a third party.
- (2) Neither the Republic nor a person is liable to pay any damages or other compensation to any other person in consequence of subsection (1).

## 30 **Regulations**

The Cabinet may make regulations of limited or general application, not inconsistent with this Act, prescribing matters necessary or convenient to be made for carrying out or giving effect to this Act and, in particular:

- (a) prescribing the warning messages, explanatory information and other information to be displayed on packages containing tobacco, including the position of the information on packages and the size, colour, style, content and nature of these warnings or information;
- (b) prescribing the size, content, colour, style, position, number and nature of information on toxic constituents to be displayed on packages of tobacco products;
- (c) prescribing the size, content, colour, style, position, number and nature of notices to be displayed concerning the prohibition on sales to persons under the age of 18 years;
- (d) prescribing the size, content, colour, style, position, number and nature of notices to be displayed concerning restrictions on smoking in enclosed public places and enclosed workplaces;
- (e) prescribing the entry into and the conduct of inspections at points of sale of tobacco products;
- (f) declaring certain smoking products to be prohibited and prescribing penalties in relation to the sale and/or import of such prohibited smoking products; and
- (g) declaring a place or class or category of places to be '*enclosed public places*' for the purposes of this Act.

## 31 **Repeal**

*The Prohibition of the Possession of Tobacco by Children Ordinance 1924-1967* is repealed.

[The next page is 121,801]

## SCHEDULE

[Section 1(3)]

### PHASED IMPLEMENTATION OF CERTAIN PROVISIONS

[Sch 1 am Act 6 of 2009 s 3, opn 28 Aug 2009]

Pursuant to Section 1(3) the provisions specified in the left hand column of the following table shall come into force on the date specified in the corresponding row of the right hand column:

Table of commencement dates

Provision of the Act	Date of commencement
Definition of ‘enclosed public place’ in Section 2	4 years and 3 months after certification
Definition of ‘enclosed public workplace’ in Section 2	4 years and 3 months after certification
Section 6	12 months after certification
Section 7	6 months after certification
Section 8	9 months after certification
Paragraph (b) of subsection 9(1), and subsection 9(5)	6 months after certification
Section 11	12 months after certification
Section 12	6 months after certification
Subsection 24(8) and Section 25	3 months after certification, provided that failure to provide information, records or copies in relation to the operation or enforcement or investigation of a suspected contravention of a provision that has not yet commenced shall not be an offence
Section 26	3 months after certification, provided that no offence shall be deemed to have been committed under this Section if it relates to a provision that has not yet commenced
Subsection 27(3)	3 months after certification, provided that it shall not be an offence to fail to comply with a direction wrongfully issued in respect of a provision that has not yet commenced
Paragraph (g) of Section 30	4 years and 3 months after certification